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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,
8 Respondent,

NOS. CR-97-0066-WFN-1
CV-07-0186-WFN

9 -vs-

10 BRIAN E. RATIGAN,

ORDER

11 Movant.

12 Before the Court is Movant Brian Ratigan's First Post-Conviction Motion - 2255, filed
13 June 4, 2007 (Ct. Rec. 259). The Court has reviewed the file and the Motion and is fully
14 informed. The Court finds that it is without authority to address the § 2255 Motion and
15 transfers it to the Ninth Circuit Court of Appeals.

16 **BACKGROUND**

17 Movant was indicted on April 9, 1997 for: Count 1-Conspiracy (18 U.S.C. § 371);
18 Count 2-Destruction of a Planned Parenthood Clinic (18 U.S.C. § 844(i); Count 7-Use and
19 Carrying of a Firearm (Pipe Bomb) in Relation to the Destruction of the Planned Parenthood
20 Clinic on July 12, 1996 (18 U.S.C. § 924(c)(1)); Count 8-Armed Bank Robbery of the US
21 Bank on July 12, 1996 (18 U.S.C. § 2113(a) and (d)); and Count 9-Use and Carrying of a
22 Firearm in Relation to the Bank Robbery (18 U.S.C. § 924(c)(1)) (Ct. Rec. 14).

23 A jury trial was held September 19, 1997 through September 30, 1997. The jury found
24 the Movant guilty on all counts (Ct. Rec. 135). Movant was sentenced by this Court on
25 December 2, 1997, to 663 months incarceration; five years supervised release; restitution of
26 \$118,394.72; and a special assessment of \$500 (Ct. Rec. 153).

1 Mr. Ratigan appealed his conviction to the Ninth Circuit Court of Appeals. On
2 May 21, 1999, the Ninth Circuit affirmed Mr. Ratigan's conviction. His Petition for
3 Rehearing was denied on July 7, 1999, and his suggestion for rehearing *en banc* was rejected
4 by the Ninth Circuit. On November 15, 1999, the Supreme Court of the United States denied
5 Mr. Ratigan's Petition for Certiorari.

6 Movant filed a 28 U.S.C. § 2255 Motion on November 20, 2000 (Ct. Rec. 219). The
7 Motion was denied by this Court on August 1, 2001 (Ct. Rec. 225). The Court's denial of the
8 Motion was affirmed on appeal. Mandate filed March 22, 2004 (Ct. Rec. 238).

9 Movant's subsequent request for a writ of mandamus and to file a second or successive
10 28 U.S.C. § 2255 motion was also denied by the Ninth Circuit. Order filed March 2, 2006
11 (Ct. Rec. 246).

12 On August 14, 2006, Movant filed another § 2255 Motion. This Court found that it was
13 without authority to address the Motion and transferred it to the Ninth Circuit Court of
14 Appeals. Order filed 9/13/06, Ct. Rec. 257. The case summary from the Court of Appeals
15 shows that the Ninth Circuit denied Mr. Ratigan's application for leave to file a second or
16 successive petition by order dated May 15, 2007.

17 As previously noted the instant Motion which Mr. Ratigan captions as a "First" Post-
18 Conviction Motion pursuant to 2255 is actually his fourth request for post-conviction relief.

19 DISCUSSION

20 Mr. Ratigan seeks an evidentiary hearing to vacate his conviction and sentence
21 pursuant to § 2255.¹ The Congress has established a mechanism for prisoners in Mr.

22
23 ¹Mr. Ratigan also makes one reference in the body of his Motion to 28 U.S.C. § 2241
24 and one reference to 42 U.S.C. § 1983. He is clear, however, that the relief he seeks is an
25 evidentiary hearing to "CORRECT THIS UNCONSTITUTIONAL JUDGEMENT AND
26 SENTENCED [sic]". Motion p. 4.

1 Ratigan's position to collaterally attack his/her convictions and sentences.

2 A prisoner in custody under sentence of a court established by Act of Congress
3 claiming the right to be released upon the ground that the sentence was imposed
4 in violation of the Constitution or laws of the United States, or that the court was
5 without jurisdiction to imposed such sentence, or that the sentence was in excess
of the maximum authorized by law, or is otherwise subject to collateral attack,
may move the court which imposed the sentence to vacate, set aside or correct
the sentence.

6 28 U.S.C. § 2255. This same statute provides however, that the district court lacks authority
7 to review successive habeas motions filed without authorization from the court of
8 appeals. 28 U.S.C. § 2255; 28 U.S.C. § 2244(b)(3)(A); *see also United States v. Allen*, 157
9 F.3d 661, 664 (9th Cir. 1998). The Antiterrorism and Effective Death Penalty Act of 1996
10 [AEDPA] amended the federal habeas statutes and added the requirement that any prisoner
11 seeking to file a successive habeas application must first file, in the appropriate court of
12 appeals, a motion for an order authorizing the district court to consider the successive
13 application. 28 U.S.C. § 2244(b)(3)(A). Once the prisoner files such a motion, the court
14 of appeals then reviews the successive application to determine whether the prisoner has made
15 a prima facie showing that the new claim is (1) based on the discovery of new material
16 evidence, or (2) based on a new rule of constitutional law made retroactive by the
17 U.S. Supreme Court. 28 U.S.C. § 2255; *Allen*, 158 F.3d at 664. Neither the record nor
18 any evidence submitted by Mr. Ratigan shows that he obtained the required authorization
19 from the Ninth Circuit. Therefore, this Court does not have jurisdiction to consider this
20 application for relief.

21 This Court has previously advised Mr. Ratigan that it cannot address second or
22 successive 2255 Motions without the approval of the Ninth Circuit. Order filed 9/13/06, Ct.
23 Rec. 257. Mr. Ratigan appears to have ignored the information in the Court Order and the
24 statutory procedures to be followed to obtain the relief he seeks. Last time this Court found
25 that it was in the interest of justice to transfer his request to the Ninth Circuit pursuant to 28
26 U.S.C. § 1631. The transfer of civil actions among federal courts to cure jurisdictional

1 defects, as described in 28 U.S.C. § 1631, applies to habeas corpus proceedings, and federal
2 courts should consider transfer without motion by the parties. *Cruz-Aguilera v. Immigration*
3 *& Naturalization Service*, 245 F.3d 1070, 1074 (9th Cir. 2001). The Ninth Circuit has held
4 that the interests of justice normally warrant transfer of a case rather than dismissal. *Baeta*
5 *v. Sonchik*, 273 F.3d 1261, 1264 (9th Cir. 2001). A transfer also assists litigants who might
6 be confused about the proper forum for review and avoids the "time-consuming and justice-
7 defeating" effect of requiring a case to be filed elsewhere. *Miller v. Hambrick*, 905 F.2d 259,
8 262 (9th Cir. 1990). The Court will give Mr. Ratigan the benefit of the doubt one last time
9 and transfer Mr. Ratigan's Motion to the Ninth Circuit. Further transfers of successive
10 petitions may not be warranted as it should be patently clear that the proper forum for requests
11 for successive § 2255 motions is the Ninth Circuit. 28 U.S.C. § 2255; 28 U.S.C.
12 § 2244(b)(3)(A). Accordingly,

13 **IT IS ORDERED** that:

14 1. Mr. Ratigan's "First" Post-Conviction Motion - 2255, filed June 4, 2007, **Ct. Rec.**
15 **259**, shall be **TRANSFERRED** to the Ninth Circuit Court of Appeals for determination of
16 whether his Motion should be authorized pursuant to 28 U.S.C. § 2244(b)(3).

17 2. The District Court Executive is directed to:

- 18 (a) File this Order;
19 (b) Send a copy to Mr. Ratigan and the Government; and
20 (c) Forward this file with a copy of this Order to the Clerk of the Ninth Circuit
21 Court of Appeals.

22 **DATED** this 7th day of June, 2007.

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24 s/ Wm. Fremming Nielsen
25 WM. FREMMING NIELSEN
26 SENIOR UNITED STATES DISTRICT JUDGE